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From the November 27, 2000 Massachusetts Lawyers Weekly.

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News Brief

Exculpatory Clause Bars Fraud Lawsuit

A written contract disclaimer precluded a complaint based on fraud and breach of fiduciary duty, a Superior Court judge has ruled.

The plaintiffs asserted that the motion to dismiss was improper because of the longstanding law that an exculpatory clause is invalid when a party intentionally misleads the other party to a contract.

But Judge Allan van Gestel disagreed.

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"This is not ... the type of situation ... in which one party merely accepts representations made by the other, then signs a disclaimer clause in reliance on those representations," van Gestel wrote. "In this case, the disclaimer clearly expressed the parties' intent that each side assume full responsibility for its own independent analysis of the proposed transaction."

The eight-page decision is *Harrelson, et al. v. KR Corporate Services, Inc., et al.*, Lawyers Weekly No. 12-407-00.

It comes on the heels of the recent 14-page Appeals Court ruling of *Sound Techniques, Inc. v. Hoffman*, Lawyers Weekly No. 11-237-00, in which the court ruled that the 1941 ruling of the Supreme Judicial Court in *Bates v. Southgate* in which the SJC ruled that a contracting party cannot rely on a merger clause as protection against claims based on fraud or deceit did not extend to claims of negligent misrepresentation.

Lawyers Weekly first reported *Sound Techniques* decision in the Nov. 13 issue. (See "Lease Term Bars Suit For Landlord's 'Concealment'")

The ruling by van Gestel is believed to be one of the first decisions he has made in the Superior Court's business litigation session, which was established Oct. 1.

Mitchel S. Ross, counsel for the defendants, lauded the efficiency of the session in resolving the case, which was initiated in September. Ross pointed out that the ruling came six days after oral argument.

Lisa C. Goodheart of Boston represented the plaintiffs.

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